STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 9212
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a 28-year-old woman with a high school diploma. She has worked as a cook and as a nurses aide at the Brandon Training School. More recently (1985), she opened her own day care center, and managed it until May, 1989.

The petitioner has a history of alcohol abuse, obesity,[1] and chronic depression. Her depression worsened considerably in 1989 until, in May last year, she attempted suicide by drug (Xanax) overdose. She has not worked since that time--apparently, her day care shut down as of that date.

The most detailed medical evidence of the petitioner's psychological history and current level of functioning is the report of a consultative evaluation performed in July, 1989. The consulting psychologist summarized a remarkably detailed evaluation with the following "conclusions":

The above data, then, indicate that [petitioner] likely possesses intellectual abilities high within the Low Average range, or even possibly Average intellectual abilities. She also expressed many somatic complaints which cannot be verified by this examiner. Although [petitioner] is quite troubled by her somatic difficulties, she also exhibits symptoms of Dysthymia which began by mid-1986. In the spring of this year, they became more marked and culminated in a suicide attempt. While these problems are all important, [petitioner's] greatest handicap appears to be characterological. Her past history is fraught with examples of abandonment, neglect, physical abuse, and emotional/psychological abuse. She has committed many self-punitive acts in the past, as well as made a number of suicide attempts. While [petitioner] said that her marriage has been happy until the spring of this year, her chaotic past history makes this somewhat difficult to believe. Frankly, all the evaluation data point to the strong likelihood of a chaotic and disorganized existence up to the present time.

[Petitioner's] characterological difficulties include affective instability, self-destructive acts, and a series of intense and unfulfilling interpersonal relationships. She also has experienced psychotic-like symptoms in that past, such as possibly hearing voices telling her to shoot herself. Furthermore, she is withdrawn from others and does not have many close interpersonal relationships. It is these traits that have led to a somewhat unstable vocational history and her current state of affairs. It should also be mentioned that [petitioner] abused alcohol for a number of years.

From a diagnostic point of view, the current data suggest the following configuration:

Axis I	300.40	Dysthymia, Secondary Type, Late Onset.
	305.00	Alcohol Abuse.
	300.00	Anxiety Disorder, NOS.
Axis II	301.83	Borderline Personality Disorder with Schisotypal Traits (Primary Diagnosis)
Axis III		Multiple Somatic Complaints.
Axis IV	4	Level of Psychosocial Stressor - Severe.
Axis V		Current GAF: 55.

Highest GAF Past Year: 68.

> Although [petitioner] seems to be benefiting from the counseling by phone she is receiving at the current time, she has attitudes and beliefs centering around somatic symptoms that are chronic, intractable, and possibly delusional. This woman's vague physical problems, social alienation, and general lack of trust in others generally make it difficult for her to view her problems objectively. Frankly, severe personality deterioration is quite likely and her treatment prognosis is probably very poor. Psycho-therapy (by phone or otherwise) alone is not likely to be effective, because [petitioner] will have problems establishing a therapeutic relationship. Her unusual thinking related to her bodily processes also make it difficult for her to be approached using psychological treatment methods. Consequently, psychotropic medications are probably the best choice for her, as well as behavioral management or psychosocial therapy to decrease her somatic complaints and increase her interpersonal adjustment. Since [petitioner] is already receiving medication, this should continue, but a referral to mental health for behaviorally oriented interventions might also help to improve her status.

At the request of the hearing officer, the consultative psychologist also provided a "mental residual functional capacity assessment" of the petitioner on a department form. A copy of this form is appended to this order. The consulting psychologist's opinions are uncontroverted by any other evidence of record from an examining source.

Based on the above-cited evidence, it is found that the petitioner, since May 1989, has been unable to perform any substantial gainful activity on a regular and sustained basis. It is also found that her impairments are likely to last at least 12 consecutive months. Her impairments, as described in the medical evidence, clearly meet the "listing" for "personality disorders" (see infra).

ORDER

The department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

> Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner meets the above definition. The regulations provide that an individual who suffers from a "listed" impairment is considered disabled. 20 C.F.R. э 416.925(a). As noted above, the evidence clearly establishes that the petitioner fully meets the "listing" for "personality disorders".[2] Therefore, the department's decision is reversed.

FOOTNOTES

[1]The petitioner weighs 257 pounds, which exceeds the listings for "obesity". 20 C.F.R. э 404, Subpart P, Appendix I, Section 10.10. However, since the petitioner does not (as required by the listing) appear to have significant weight-related physical problems, and because of the dispositive severity of her psychological problems, the hearing officer did not deem it necessary to make further findings regarding this problem.

[2]20 C.F.R. э 404, Subpart P, Appendix I, Section 12.08,

provides as follows:

12.08 PERSONALITY DISORDERS:

A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. Seclusiveness or autistic thinking; or
2. Pathologically inappropriate suspiciousness or hostility; or
3. Oddities of thought, perception, speech and behavior; or
4. Persistent disturbances of mood or affect; or
5. Pathological dependence, passivity, or aggressivity; or
6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

AND

B. Resulting in three of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

The evidence establishes that the petitioner meets sections A3, A4, and A6 and B1, B2, and B4 of the above listing.

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